



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 368 OF 2008**

**IN THE MATTER OF THE ESTATE OF THE LATE SERAH  
MUNEE MUTULA (DECEASED)**

**BENSON KYALO MUTULA..... PETITIONER**

**VERSUS**

**MARGARET MWONGELA KIMEU**

**JOYCE MUTHOKI KIOKI**

**IRENE NTHENYA NDUVA**

**JOSEPHINE MWELU MUTUA.....OBJECTORS**

**RULING**

1. By notice of motion applications dated 11<sup>th</sup> April 2022 and 10<sup>th</sup> May 2023, the applicant sought orders that objecting to the inclusion of Mavoko Block 2/63 and Mavoko block 2/170 as part of the estate of the deceased Serah Munee.
2. The application dated 11<sup>th</sup> April 2022 was supported by an affidavit sworn by Charles Gichaba wherein, he deposed that they were protesting against the intended inclusion of Mavoko Block 2/63 as part of the estate of the late Serah Munee as it

had been sold and transferred to the society on 30<sup>th</sup> August 2002 prior to her demise. That this was within the knowledge of the administrators.

3. The application dated 10<sup>th</sup> May 2023 was supported by the affidavit sworn by Orare Ongaru wherein he deposed that they bought their parcel of land from P&T Housing Co-operative Limited between the year 2009 and 2019 and were issued with legitimate title deeds for their respective titles. That on 30<sup>th</sup> January 2023 some strangers who introduced themselves as family members of the late Serah Muneo stormed their estate claiming to be the registered owners of the land. They were told that the original land parcel No Mavoko Town Block 2/170 where their homes stood had reverted back to the estate of the deceased vide orders of the court. That the said property was bought by P&T Housing Cooperative from the deceased during her lifetime who transferred the same to them 4 years preceding her demise.
4. He deposed that they discovered that one Mr Joseph Tamata directed the registrar to implement the orders of the court thus the land registrar implemented the orders affecting the Mavoko Town Block 2/170 and sub division thus giving rise to more than 300 titles.

5. The land registered informed them that the cancellation of the title was as a result of the court orders in Machakos Succession case No 368 of 2008 and sought that this court do find that Mavoko Town Block 2/170 does not form part of the estate of the deceased Serah Munee.
6. The application was opposed through the replying affidavit of Irene Nthenya Nduva where she deposed that the property Mavoko Town Block 2/170 formed part of the estate of the Jackson Mutula. That as per the certificate of confirmation of grant in respect of the Estate of Jackson Mutula Mutua issued in 15<sup>th</sup> December 2000, the property Mavoko Town Block 2/170 was bequeathed to Serah Munee.
7. That the grant in Machakos High Court Succession No 162 of 200 issued to her late mother Serah Munee was revoked and the order of judge D. Kemei was to the effect that all titles issued as per the revoked grant were cancelled and the whole parcels to revert back to the name of Jackson Mutula Mutua.
8. She also deposed with regard to property Mavoko town Block 2/63 that it also formed part of the estate of the late Serah Munee and that there was cancellation of the title as they were fraudulently obtained. She deposed that the applicants had not exhibited any sale agreement with respect to the property

Mavoko town Block 2/63 between the late Serah Muneo and the alleged trustee of P&T Employees Housing Co-operative Society Ltd and that the purported transfer was fraudulent and ought to be cancelled.

9. The application was also opposed through the Replying affidavit sworn by Benson Kyalo Mutua wherein he deposed that the applicants had not availed any evidence to demonstrate that they purchased the property from the late Serah Muneo and that the suit property has never been registered in her name. That it was registered in the name of Jackson Mutula.

10. The matter was canvassed by written submissions.

### **Submissions**

11. Counsel for the Applicant submitted that they had tabled credible and weighty evidence to demonstrate that the suit property were never part of the estate of the deceased by providing the following documents: title for Mavoko town Block 2/63, Mavoko town Block 2/170, **Machakos ELC case No 47 of 2017 and , Machakos ELC case No 24 of 2014.**

12. It was submitted that Section 93 of the Law of Succession Act applies in this case and the administrators had not demonstrated any exception to the application of Section 3 and 93 of the Act.

### **Determination/Analysis**

13. I have considered the applications as well as the corresponding affidavits, submissions and the law.
14. The issue for determination is whether the two properties Mavoko town Block 2/63 and Mavoko town Block 2/170 form part of the estate of the deceased Sarah Muneo.
15. Section 3 of the Law of Succession Act defines "estate" as the free property of a deceased person.
16. The applicant averred that the deceased Sarah Muneo sold the two properties Mavoko town Block 2/63 and Mavoko town Block 2/170 to them 4 years before her demise and they had obtained titles for the said properties.
17. In the case of **Musa Nyaribari Gekone & 2 others v Peter Miyianda & another [2015] KECA 573 (KLR)** the court stated:-
- “39. Section 93 of the Law of Succession Act** has been the subject of judicial interpretation in a number of cases. In a recent persuasive decision of **Adrian Nyamu Kiugu vs.**

**Elizabeth Karimi Kiugu and Anor [2014] eKLR the High Court at Meru stated:**

***“Whereas the above section states that a transfer by person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that such transaction can only be relied upon where the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. The purchaser in this cause came from the neighborhood of the objector and it is not possible that he did not know of the objector herein. I therefore find and hold the sale to be invalid.”***

**40. In Jecinta Wanja Kamau vs. Rosemary Wanjiru Wanyoike and Another[2013]eKLR where the appellant therein unsuccessfully sought protection under section 93, this Court sitting in Nyeri stated:**

***“Before the appellant could seek protection as a purchaser under Section 93 of the Act she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case, and as provided by Section 82 (b) (II) of the Act, it would have been illegal for Beatrice Njeri Magondu to sell the land before the confirmation of the grant.”***

**41. In Jane Gachoki Gathecha vs. Priscilla Nyawira Gitungu and another [2008] eKLR where a purchaser claimed that he was not aware of, and was not a party to, the fraudulent dealings with the title in issue and was therefore not only protected under S.93 (1) of the Law of Succession Act (Cap 60) but also section 143 of the Registered Land Act, this Court sitting in Nyeri stated this:**

***“We think, with respect, that there is a fallacy in invoking and applying the provisions of section 93(1) of the Law of Succession Act and the superior court fell into error in reliance of it. The section would only be applicable where, firstly, there is a “transfer of any interest in immovable or moveable property”. Kabitau had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”***

**42. In Re Estate of Christopher Jude Adela (Deceased) [2009] eKLR, K.H. Rawal, J (as she then was) had this to say in reference to Section 93 of the Law of Succession Act;**

***“The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious***

***defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of section 23 of the RTA (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing the interests and rights or right beneficiaries of the estate.***

**In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.”**

**43. Those decisions support the position taken by the learned judge of the High Court in this matter when he stated that while under Section 93 of the Law of Succession Act a revocation or variation of the grant does not invalidate a transfer by the personal representative, other considerations, such as the disposal of the property in contravention of the confirmed grant may invalidate the transfer. Having found as he did that the transfer of the property by**

**the personal representative to himself, the 2nd respondent and one Margaret Kerubo Orina was contrary to the provisions of the grant and having found evidence of fraud with regard to the representation in the application for grant and subsequent confirmation as to the persons beneficially entitled to the deceased's estate, the learned Judge was correct to take the view that section 93 of the Law of Succession Act did not afford the 3rd appellant protection. There is therefore no merit in the complaint that the learned Judge erred in revoking, nullifying and cancelling the transfer and registration of the suit property in favour of the 3rd appellant in contravention of section 93 of the Law of Succession Act."**

18. From the above decision the main consideration is whether the transfer by the Administrators was tainted with fraud. In this case the respondent averred that the property Mavoko Town Block 2/170 belongs to the estate of his father Jackson Mutua and that property Mavoko Town Block 2/63 forms part of the estate of the late Serah Muneo and that the titles were cancelled as they were fraudulently obtained. However there was no cogent evidence of fraud on the part of the administrators. As such their actions are protected by Section 93 of the Law of

Succession Act and consequently the properties LR No. Mavoko Town Block 2/63 and LR No.Mavoko Town Block 2/170 do not form part of the estate of the deceased Sarah Mune.

Orders accordingly.

**Ruling signed, dated and delivered virtually this 4<sup>th</sup> day of December, 2025.**

**E. N. MAINA  
JUDGE**

**IN THE PRESENCE OF:**

Mr. Maranga for Momanyi for Interested Party

Mr. Kitunga for Uvyu for the Administrators

Geoffrey – Court Assistant/Interpreter